

UTILITY ADVISORY COMMITTEE  
CITY OF FORT LAUDERDALE  
CITY HALL 8<sup>TH</sup> FLOOR CONFERENCE ROOM  
100 NORTH ANDREWS AVENUE  
FORT LAUDERDALE, FLORIDA 33301  
MAY 24, 2011 – 6:30 P.M.

Cumulative  
January 2011-  
December 2011

<b>Committee Member</b>	<b>Attendance</b>	<b>Present</b>	<b>Absent</b>
Bunney Brenneman, Chair	P	3	0
Robert Cole, Vice Chair (arr. 6:40)	P	2	1
Maria Canady (arr. 6:50)	P	2	1
L. Thomas Chancey	A	2	1
Donald Lampasone	P	1	0
Don Larson	P	3	0
Ruchel Louis	A	1	2
Terri Murru (arr. 6:38)	P	1	2
Stephanie Toothaker	A	1	2
Jay Weiss	P	3	0
Dennis West	P	2	0

**Staff**

Hal Barnes, Engineering Design Manager  
Bob Dunckel, Assistant City Attorney  
Dennis Girisgen, Public Works  
David Gennaro, Chief Landscaping Plans Examiner  
Terry Burgess, Chief Zoning Administrator  
Amanda Lebofsky, Recording Secretary, Prototype, Inc.

**Guests**

Vic Beninate, AT&T  
Anniken Patino, AT&T  
Fred Stresau, Board of Adjustment  
John Aurelius, Guest

**Communications to City Commission**

**Motion** made by Ms. Murru, seconded by Mr. Weiss, to recommend to the City Commission to consider the opportunity to approve the Fort Lauderdale Hilton Beach Resort's site-specific commercial application for wind turbine installation. In a voice vote, the **motion** passed 7-1 (Mr. Larson dissenting).

**I. Call to Order**

Chair Brenneman called the meeting to order at 6:33 p.m.

**II. Roll Call**

Roll was called and it was noted a quorum was not yet present.

**III. Welcome New Members / Self-Introductions**

The Committee, Staff, and guests introduced themselves. Chair Brenneman welcomed new member Don Lampasone.

The following Item was taken out of order on the Agenda.

**V. New Business**

Ms. Murru arrived at 6:38 p.m.

Mr. Aurelius stated he was upset that public rights-of-way were not being protected in the City. He explained that in some areas, particularly Bayview Drive, "at least 10% of the [utility] poles are duplicates" but are not being removed. He cited other areas of the City in which he had seen this occur, and distributed photographs to the Committee, stating that the poles are eyesores.

Mr. Aurelius requested that the Committee ask the City Commission to develop a public policy and an action plan with respect to the poles. He said the poles in question are owned by AT&T, FPL, and Comcast.

Vice Chair Cole arrived at 6:40 p.m.

Mr. Lampasone asked Mr. Aurelius if he had reported the problem to Code Enforcement or to the Building Department. Mr. Aurelius said he had spoken to these Departments as well as the City Attorney's Office, and had ultimately been referred to the Public Service Commission. He said the poles are abandoned in City rights-of-way and should be removed.

Chair Brenneman explained there are several guests at tonight's meeting in order to try to arrive at solutions or recommendations for the Agenda Items. The guests have the authority in their respective areas of expertise to address these issues. She noted that for the issue of the poles, AT&T, FPL, and Comcast are the responsible entities; most poles are owned by AT&T.

Mr. Weiss noted that a quorum was now present.

Mr. West said the issue of the poles was another example that utility companies were not concerned with the City's appearance, and advised the City Attorney's Office would need to take action. Attorney Dunckel advised that the City Attorney's Office is not in charge of enforcement.

Chair Brenneman agreed that the City Commission would have to develop a public policy and a method for implementation of that policy.

Vice Chair Cole said the issue occurs when poles are replaced: one utility moves their wires to the new poles but another does not. He said it is primarily an issue of getting the wires moved in an appropriate time frame.

Attorney Dunckel said he was not aware of an Ordinance that Code Enforcement could use to force utility companies to remove poles. He said the Engineering Department holds a monthly utility coordination meeting with Comcast, AT&T, and FPL the second Tuesday of each month to informally discuss a number of issues, and suggested the problem of pole removal could be brought to their meeting as a line item. He concluded that that committee should be charged with formally devising a plan to address the issue, but noted that existing public service regulations do not make this a simple issue to address.

Mr. Lampasone asked what procedure is necessary when a utility company installs a new pole. He suggested the permitting process could be changed to ensure no permit is final until the replaced pole has been removed.

Mr. Girisgen said engineering permits are required by private utilities for the installation of new poles; however, there is no incentive for that utility to close out the permit quickly. Another factor is that there could be a gray area regarding whether or not the old pole is still needed by the utility company. He agreed with Attorney Dunckel that the monthly utility meeting could provide a good forum in which to raise this issue.

Vice Chair Cole said in addition to the utility meeting, the City may need to develop a list of all the poles in need of removal and to whom they belong; they could then follow up with the utility companies to determine their progress. He noted that the utility that owns a particular pole may be waiting for another utility to move its lines to a new pole, or may not be aware that these lines have been moved.

Vic Beninate of AT&T explained that the utility company which owns a pole also rents it to other utilities; there is an existing computer database that shows which company owns a particular pole and which companies rent use of that pole. When utilities relocate lines from an old pole to a new one, the first company to move its lines must be the power company for safety reasons. These transfers

are entered into the database, which then informs the next utility that they can now transfer their lines. The final utility to be transferred is AT&T, after which time the old pole can be removed. He agreed that the monthly utility coordination meeting would be the best place to address the issue.

Chair Brenneman asked Mr. Beninate to explain the difference between the two varieties of pole tops. Mr. Beninate said most FPL poles are cut in "Christmas tree fashion" on top to make them easier to identify; at a 6 ft. height, there will also be a pole tag and/or a brand to show the owner of the pole.

Mr. Barnes clarified that the meeting in question occurs the second Tuesday of each month at 8:30 a.m., and is attended by FPL, Comcast, AT&T, Tico Gas, and members of the Public Works and Permitting Departments. Some topics are addressed every month. He advised that while the meeting has discussed pole removal before, it is not a standing topic. He also agreed the meeting was the appropriate venue for discussion of pole removal.

**Motion** made by Ms. Murru, seconded by Vice Chair Cole, to recommend that this issue become a priority for this monthly meeting, and that the Committee consider asking for an appropriate timeline, where they begin immediately and let the Committee know where [the meeting has] goals and objectives and how long they think it will take, to get back to this Committee at our next meeting.

Chair Brenneman restated the **motion** as follows: to recommend to the City Manager that the monthly utility coordinating meetings include the topic of pole removal on a monthly basis, and that the Committee be advised when this can be implemented.

Ms. Murru emphasized that the Committee should see a timeline for the project, as both public and private entities are in agreement that pole removal must be addressed.

Mr. Barnes advised that this will be a continuing process, and said it could be reported back to the Committee how many poles are being tracked through the existing database and how many poles are being replaced each month. Ms. Murru said she would like to see the pace of the removal process increased. Mr. Barnes said the topic will be added to the utility coordination committee's June meeting agenda, and can be reported on at the next UAC meeting.

Mr. West asked why this topic has been discussed at previous coordination committee meetings, but has not been resolved. Mr. Barnes explained when the topic has previously arisen, it has been with regard to "specific poles in particular neighborhoods," which are addressed on an as-needed basis rather than an ongoing item. It will now be added as a regular item.

Mr. Lampasone suggested a member of the UAC could attend the coordinating meeting as a liaison. Mr. Barnes explained that he sits on the coordinating committee and would act as liaison for the board.

Mr. Beninate added that all three major utilities – cable, telephone, and power – use the database for tracking poles. Mr. West commented that he would be interested in seeing historical information from the database.

Mr. Weiss asked if it would be possible for an Ordinance to be passed that would require utilities to remove poles within 60 days of receiving their permit, and to remain in contact with the other utilities to ensure this is accomplished. There would be a monetary penalty if poles are not removed. Attorney Dunckel advised that the City may have the ability to impose such an Ordinance; however, he was not certain it was possible to impose a time limit within which poles must be removed, as this would be dependent upon all the utilities' moving their lines.

In a voice vote, the **motion** passed unanimously.

Mr. Aurelius noted that an intersection at Oakland Park Boulevard still has cement poles and lines although traffic control devices have been removed. Mr. Barnes advised that this was a Florida Department of Transportation (FDOT) project and roadway. Vice Chair Cole added that Broward County had jurisdiction in this case. Chair Brenneman volunteered to take this issue to the County Commission level and advise Mr. Aurelius of its progress.

- **Discussion on AT&T Boxes**

Chair Brenneman advised this is also a right-of-way issue. Attorney Dunckel recalled that an individual member of the community had circulated complaints via email about the number of AT&T cabinets; because the individual was unable to attend tonight's meeting, he had asked Mr. Beninate to introduce the issue.

Mr. Beninate said he had worked with the individual on the placement of and landscaping around some of the Uverse boxes in order to minimize their appearance. He noted that some areas have boxes by AT&T, Comcast, and FPL that have been in place for many years. There is no Ordinance that addresses the boxes. Mr. Beninate explained that they represent "old technology" to serve the City.

Other concerns include the boxes' effect on landscaping. Anniken Patino, representing AT&T, is the engineer in charge of landscaping in Broward County. She said AT&T is committed to meeting the City's landscaping requirements: they have retained a certified landscaper and inspected all the box sites in Fort Lauderdale. The landscaper has guaranteed the life of the plants for six months, after which all sites in the City will continue to be inspected on a 60-day rotation.

Attorney Dunckel clarified that the existing Ordinance does not apply retroactively. Cabinets in existence prior to the adoption of the Ordinance are not subject to its rules and regulations.

Ms. Patino showed a PowerPoint presentation of some ways in which AT&T has addressed the recent complaints. She noted that many of the cabinets are only available in one color and cannot be painted due to the electronics inside. Mr. Beninate explained that painting the new cabinets a darker color heats up the interior of the box and can disrupt service.

Chair Brenneman stated that Mr. Aurelius would like to address another issue with AT&T. Mr. Aurelius said he did not agree with what AT&T has said about landscaping the areas where its boxes are located, and showed pictures of "a brand new box" and others that he said has killed vegetation. He added that part of the Ordinance requires "planting to the road side of the sidewalk," which he said caused pedestrians to "[walk] along between the hedge...and the box."

Attorney Dunckel advised this was a way the City Commission had determined would mitigate the visual impact from the roadway. He added that the cabinet doors may not open onto the public right of way side. Mr. Aurelius stated that this "doesn't look right," and asserted that there is a process in place under the City Ordinance to address the boxes.

Attorney Dunckel suggested that this may be another issue that belongs on the utility coordination meeting as a standing item. He noted that when many site-specific complaints have arisen, AT&T has addressed them, but agreed there should be a systematic way of locating and tracking Ordinance violations so they can be corrected.

Fred Stresau, guest, pointed out that he, Mr. Gennaro, and Attorney Dunckel have met "for many weeks" regarding plant material selection. He noted that part of the issue is that AT&T may not have spent any time maintaining its plants prior to the present. He said if they have located a contractor to regularly inspect and maintain plant material, the issue may go away.

Chair Brenneman asked what species are recommended for plant installation near the boxes. Mr. Gennaro provided a handout listing the appropriate guidelines, noting that depending upon the location of the boxes, small trees or small palms may be placed in the vicinity, along with specific shrubs.

Attorney Dunckel said he felt maintenance is key to the Ordinance. Mr. Stresau said the Ordinance is structured in a way that places the burden of maintenance on AT&T; however, they can also have relationships with homeowners'

associations or individual property owners, many of whom take pride in the appearance of their yards.

Mr. Beninate volunteered his name and contact information for anyone who has issues with the boxes and/or landscaping. He added that the previous underground contractor has been replaced and AT&T plans to abide by the Ordinance.

Mr. Stresau explained that he had met with Mr. Beninate and Committee Liaison Peter Partington to analyze where the boxes could go in rights-of-way and other circumstances. The catalyst for the initial discussion was that the boxes' doors opened toward the road, which complicated landscaping in the rights-of-way. He concluded that a lot of thought went into the determination of where the boxes would be located, the direction in which the doors would open, and what material would be used for landscaping. Mr. Beninate added that AT&T has accommodated homeowners' requests to shift the boxes whenever possible.

**Motion** made by Ms. Murru, seconded by Vice Chair Cole, to recommend that this be a priority for the monthly utility coordinating meetings at the Staff level.

Mr. Stresau commented that he felt Mr. Beninate has been very cooperative in working within the Ordinance, and suggested that AT&T could be asked to provide a list of the boxes and locations that have been refurbished so Committee members can see them if they want.

In a voice vote, the **motion** passed unanimously.

Chair Brenneman requested that "tree trimming and maintenance" be placed on the Committee's June Agenda.

- **Update on Windmills & Wind Turbines**

Attorney Dunckel provided the members with copies of Florida Statute 163.04, Energy Devices Based on Renewable Resources. He advised that the most important subsection is the first, which states that the adoption of an Ordinance by a governing body which effectively prohibits the installation of devices, such as solar collectors, clotheslines or other renewable energy devices, is itself prohibited. He pointed out, however, that the subsection does not specify windmills, and items included in a catchall category, such as "other renewable energy devices," must be of a similar class.

He referred to a case directly involving windmills which is predicated on the Statute: this would mean the Statute does apply to windmills according to case law. Attorney Dunckel explained that this means a city cannot pass an Ordinance

prohibiting windmills, although there are guidelines within the case for their restriction.

Thus far, three requests for variances have come before the Board of Adjustment, two of which involved windmills and the third of which involved a wind turbine. One request was for a 65 ft. windmill in an RS-8 district, which has a height restriction of 35 ft. Expert testimony had demonstrated that "wind shadows" extended toward the property at a lower height, and the application was ultimately denied. The second windmill request was also denied. The wind turbine, which has been placed atop a four-storey building on 16 Street, was approved, as it was several storeys high and located within a business district rather than a residential one.

Attorney Dunckel introduced Heidi Davis, representing Costa Barrada, owner of the Hilton, which has a case coming before the Board of Adjustment. He explained when the case first came before the Board, there was a feeling that it could be a precedent-setting case. It also involves "an array of much broader policy issues" than the Board of Adjustment regularly addresses, and could potentially "[open] up the City to windmills." The Board of Adjustment deferred the case until July and communicated their concerns to the City Commission, who referred it back to the UAC. At the Board of Adjustment's next meeting, they decided to recommend that the Planning and Zoning Board, the Board of Adjustment, and other interested City boards or committees participate in a workshop to discuss related issues.

Ms. Davis advised that the owner of the Hilton wants to bring green technology and sustainable strategies to the facility. She referred to the proposed structures as "wind sculptures" and said this type of device was chosen by the owner because it is marine-grade, and can withstand saltwater intrusion and winds up to 145 mph. She added that the devices are very quiet.

Ms. Davis said the Board of Adjustment had been unable to help the Hilton erect the proposed structures; however, there is no regulation in the ULDR to approve these devices. They are currently considered to be "mechanical structures," which require the approval of the Board of Adjustment. She noted that mechanical structures are required to be screened, but pointed out that it would be very difficult to screen a device of this size; in addition, a screen could prevent wind from circulating through the device. She concluded that the Hilton is working with the City Commission to determine answers both for this case and for City policy.

Ms. Murru asked if information was available regarding detrimental effects to birds, or other negative effects. Ms. Davis characterized this as a misconception due to the kind of devices that have previously come before the City. She stated there was no downside to these structures.



Attorney Dunckel said the windmills that have come before the Board of Adjustment have a way to "lock the propeller" at a particular speed. Ms. Davis reiterated that this was a different kind of device.

Jiro Yates, architect for the Applicant, advised that the applicable sections of the ULDR address the devices' height, screening, and whether or not they are a permitted use. He explained that these are small wind turbines of 100 kilowatts or less and do not resemble wind farms. He referred the Committee members to pictures of the proposed devices and other types of wind energy-producing devices, noting that the structures proposed for the Hilton are the same as the structure currently on 16 Street.

Attorney Dunckel asked what the plans would be for the proposed devices in the event of a hurricane. Mr. Yates said the structures on the Hilton's roof may not be brought down, and consequently may be reinforced to withstand winds in excess of 145 mph. The structures at grade or on the building may or may not be moved should a hurricane occur.

Regarding avian mortality, Mr. Yates said this is more often found with the larger kind of turbine used in a wind farm, as birds are said to be attracted to these devices. He advised that there have been no reported bird deaths associated with the structures proposed for the Hilton.

He showed the Committee the proposed layout of the structures on different parts of the building, noting that the devices will include navigational lights.

Mr. Lampasone asked how much power the devices would generate for the Hilton. Mr. Yates said they do not produce a great amount of energy in proportion, but explained that the combined effect of the different devices is expected to be "about 32 kw of wind turbine," or the equivalent of seven fluorescent bulbs in each of the Hilton's 333 suites.

Mr. Lampasone asked if figures are available on when the Hilton would recoup its investment in the devices. Mr. Yates said this was a very expensive system, due to structural issues and energy monitoring systems. A screen will be available in the lobby to show the energy being produced in real time, as well as historical production. Ms. Davis said the use of sustainable strategies is a reason some guests come to a hotel.

Mr. Larson asked what the devices would cost "in relationship to LEDs." Mr. Yates said LEDs are currently not cost-effective due to pricing, but he did not have further information. Mr. Larson commented that in his opinion the device in question is "basically a turbine." He said he was not in favor of seeing these

devices widely used, and felt the ones at street level could create "major problems."

Ms. Murru asked for an explanation of why the Committee should not approve the efforts of a private business to "go green." She stated that she did not want to interfere with a private entity's right to run their business unless there was some liability exposure to the residents' tax dollars.

Attorney Dunckel said the Committee has only the authority to offer input to the City Commission, not to approve or disapprove. With respect to liability, he said if the devices are approved by the Board of Adjustment and then "fell down," he did not see that the City would have liability exposure; however, he advised that they should be aware of potential situations that could arise from the approval of this case. He characterized this as "a ripple effect throughout the entire community," and concluded that the wind velocity in the area is insufficient to generate a great deal of power, although this may be different close to the beach rather than farther inland.

Ms. Murru pointed out that the recommendation would be within a commercial rather than a residential district. Mr. Larson said the results of the decision in a commercial district would "flow into" residential areas eventually. Ms. Murru disagreed, pointing out how difficult it can be to make changes to existing Code. Ms. Davis said another issue is the question of whether or not an Ordinance should be created to address these specific sustainable devices. She added that the Hilton is making additional proposals as part of a request for site plan approval modification in addition to the wind structures.

Ms. Murru asked if there is any precedent set by other cities that have addressed this issue. Mr. Yates said the regulations are very diverse depending upon the area.

Chair Brenneman noted that while the devices would withstand winds up to 145 mph, a Category 5 hurricane is 150 mph. She asked why this was not made the cutoff point for what the devices would withstand. Mr. Yates said Florida Building Code regulates up to 145 mph.

Vice Chair Cole said the main issue has been bringing devices into residential areas. In this case, he noted the building in question will be on the beach. He said he felt they should take these issues on a case-by-case basis.

Attorney Dunckel advised that when the Committee crafts a motion, they may want to consider embracing the specific location of this case, but also advise the City Commission that there are "grave concerns" with respect to residential areas.

Mr. Lampasone stated that other countries are using these devices in both commercial and residential areas, in some cases with modifications, to power buildings. He said he would be in favor of a positive recommendation because he felt alternative forms of energy should be included in the building Code, and this is the time to begin working in that direction. He felt these developments are "way behind" at present, and the Committee should be forward-looking.

**Motion** made by Ms. Murru, seconded by Mr. Weiss, to recommend to the Commission that we consider this opportunity for this site-specific commercial application only, the Fort Lauderdale Hilton Beach Resort.

Mr. Burgess noted that he had thought there would be further discussion of an Ordinance rather than a site-specific recommendation. Attorney Dunckel said there would be additional input from the upcoming workshop, which would be weighed by the City Commission.

In a voice vote, the **motion** passed 7-1 (Mr. Larson dissenting).

#### **IV. Administrative Re-vote on Minutes Required: Minutes of February 22, 2011 Meeting**

Chair Brenneman advised that this Item would be deferred.

- **Solar & Alternative Energy Sources**

Mr. Larson distributed copies of an article from the *Sun-Sentinel* regarding a wind farm near Lake Okeechobee. He explained if the City does not address this issue, it could become a problem for Fort Lauderdale.

- **Other New Business**

None.

#### **VI. Continuing Business**

None.

#### **VII. Communications to City Commission**

Chair Brenneman advised that the recommendation regarding the Hilton's wind devices would be sent as a communication to the City Commission.

#### **VIII. Good of the Committee**

None.

**IX. Announcements:**  
**Tuesday, June 28, 2011, Next UAC Regular Meeting**

Chair Brenneman said the issue of tree trimming would be added to the meeting agenda for June.

Mr. Lampasone asked how a new Item would be added to an upcoming agenda. He explained he has an interest in examining the Water Department's right to charge for service when service is turned off. Chair Brenneman said the Committee was mandated to address utilities other than water.

**X. Adjournment**

There being no further business to come before the Committee at this time, the meeting was adjourned at 8:35 p.m.

[Minutes prepared by K. McGuire, Prototype, Inc.]